



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**WILL WILSON
ATTORNEY GENERAL**

May 17, 1962

Honorable Tom Todd
District Attorney
104th District
Abilene, Texas

Opinion No. WW-1334

Re: Whether the County Auditor
can approve for payment
a claim by a Court Reporter
for a transcript made of
Grand Jury proceedings
under the following facts.

Dear Sir:

In your recent letter you request our opinion on whether the County Auditor can approve for payment a claim by a Court Reporter for a transcript made of Grand Jury proceedings under the following facts.

The relevant facts are that prior to employing the reporter the County Judge and one Commissioner were contacted and consented to such employment. Further such reporter began his duties with the full knowledge of the balance of the members of the Commissioners' Court. The District Attorney feels that the expense was a necessary one in the conduct of his office.

Article 3899, Section (b) states in part:

"(b) Each officer named in this Act [District Attorneys being named in the Act] where he receives a salary as compensation for his services, shall be entitled and permitted to purchase or charge to his county all reasonable expenses necessary in the proper and legal conduct of his office, premiums on officials' bonds, premiums on fire, burglary, theft, robbery insurance protecting public funds, and including the cost of surety bonds for his deputies, provided that expenses incurred for premiums on officials' bonds for the county treasurer, county auditor, county road commissioners, county school superintendent, and the hide and animal inspector, including the cost of surety bonds for any deputies of any such officers, may be also included, and such expenses to be passed on, predetermined and allowed in the time and amount as nearly as possible, by the Commissioners' Court once each month for the ensuing month, upon the

application by each officer, stating the kind, probable amount of expenditure and the necessity for the expenses of his office for such ensuing month, which application shall, before presentation to said court, first be endorsed by the county auditor, if any, otherwise the county treasurer, only as to whether funds are available for payment of such expenses. . . ."

The District Attorney is therefore authorized to charge to his county all reasonable expenses necessary in the proper and legal conduct of his office.

This office has heretofore held that the District Attorney was acting in the proper and legal conduct of his office when he contracted for a transcript of an examining trial, Attorney General Opinion (1949) V-976, a transcript of a tape recording of a radio program, Attorney General Opinion (1960) WW-874, and employment of a public accountant to audit records for the grand jury when necessary for criminal investigation, Attorney General Opinion (1961) WW-1086.

It is the opinion of this office that the phrase "all reasonable expenses necessary in the proper and legal conduct of his office" is sufficiently broad in scope to cover the expense of employing a court reporter by the District Attorney to transcribe the testimony before a grand jury. Certainly a diligent District Attorney would want to preserve such testimony for his own use in the event of trial.

A further question concerns the prior approval by the Commissioners' Court of such expenditure. You have stated that the County Judge and one Commissioner gave their approval and that the remaining Commissioners knew about the employment when the reporter took on the duties. Whether this was sufficient to be "passed on, predetermined, and allowed" is doubtful. However, Attorney General's Opinions (1961) WW-1086 and (1951) V-1149 hold that such expenses may be either approved prior to the expenditure or subsequently ratified by the Commissioners' Court. It is said in Attorney General Opinion (1961) WW-1086:

"The question of whether the prior endorsement of the County Auditor or County Treasurer, as the case may be, and the prior approval of the Commissioners Court is necessary before incurring such expense, under Article 3899,

Section (b) is discussed in State v. Carnes, 106 S.W.2d 397, 399 (Civ.App. 1937) and Attorney General's Opinion V-1149. This case concerns interpretation of said article concerning expenditures by the sheriff's department:

'While the entry by the commissioners' court of an order authorizing the appointment of deputies and fixing their compensation upon proper application by the officer in accordance with article 3902 is a condition precedent to his claiming credit as a matter of right, for salaries paid his deputies, this statutory provision was not intended as a limitation on the power of the commissioners' court, and any affirmative action of the court authorizing or approving the expenditure before or after it was incurred would bind the county and authorize the deduction. The commissioners' court may ratify that which it might have authorized originally. Cameron County v. Fox, 61 S.W. 2d 483.' (Emphasis added)

Since you state that the Commissioners' Court is desirous of paying this bill, a subsequent ratification by them will be sufficient to authorize the payment of this expense.

The authority of a court reporter to be present before the proceedings of a grand jury was discussed by the Court of Criminal Appeals in McGregor v. State, 201 S.W. 184, 185 (1918):

"Construing these provisions of the statute, it has been held that among the persons authorized by law to be present with the grand jury were the state's attorney, his assistant and stenographer, witnesses and members of the grand jury disqualified in the particular inquiry under investigation. Stuart v. State, 35 Tex. Cr. R. 440, 34 S.W. 118; Sims v. State, 45 S.W. 705; Wilson v. State, 41 Tex. Cr. R. 115, 51 S.W. 916; McElroy v. State, 49 Tex. Cr. R. 604, 95 S.W. 539; Moody v. State, 57 Tex. Cr. R. 76, 121 S.W. 1117; Haywood v. State, 61 Tex. Cr. R. 92, 134 S.W. 218; Porter v. State, 72 Tex. Cr. R. 71, 160 S.W. 1194. None of these persons are authorized to be present while the grand jury is

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deliberating upon the accusation, or voting on it. This is held in all the cases mentioned."

No reason is perceived why, if the presence of the District Attorney's stenographer in the grand jury room is authorized, the presence of a court reporter employed by the District Attorney would not be. For the main purpose of the presence of either would be to transcribe evidence to aid the State's attorney in preparing for trial.

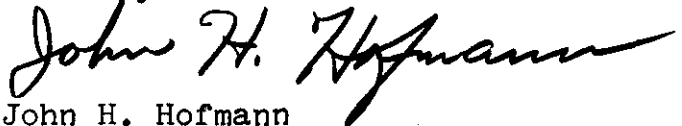
It is the opinion of this office that when the said expense is subsequently ratified by the Commissioners' Court, the County Auditor should approve for payment the claim as a reasonable expense of the District Attorney in the proper and legal conduct of his office.

S U M M A R Y

The County Auditor can approve for payment, a claim by a Court Reporter for a transcript made of Grand Jury proceedings when requested by the district attorney if the Commissioners Court either approved or subsequently ratified said claim.

Very truly yours,

WILL WILSON
Attorney General of Texas



By: John H. Hofmann
Assistant

JHH:kkc:mkh

APPROVED:
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